

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.A.No. 390 of 1999(C)

CRA.315/1997 of SESSIONS COURT, THALASSERY

APPELLANT/RESPONDENT/COMPLAINANT:

**STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

RESPONDENTS/APPELLANTS/ACCUSED:

**1.N.ANEESH,S/O.GOVINDAN,THOMAMBRA AMSOM,
MALOOR DESOM, THALASSERY TALUK, KANNUR DISTRICT.**

**2.P.PAVITHRAN,S/O.GOPALAN,THOLAMBRA AMSOM,
MALOOR DESOM,THALASSERY TALUK, KANNUR DISTRICT.**

**3.K.BABU @ SURESH BABU,S/O.BALAN,THOLAMBRA AMSOM,
MALOOR DESOM, THALASSERY TALUK, KANNUR DISTRICT.**

**4.KOTTAN REGHU @ RAGHUNATHAN, S/O.PAIDAL,
THOLAMBRA AMSOM, MALOOR DESOM, THALASSERY TALUK,
KANNUR DISTRICT.**

**5.N.SIVARAMAN,S/O.SANKARAN,THOLAMBRA AMSOM, MALOOR
THALASSERY TALUK, KANNUR DISTRICT.**

**6.P.MUKUNDAN,S/O.RAMUNNI,THOLAMBRA AMSOM, MALOOR
DESOM, THALASSERY TALUK, KANNUR DISTRICT.**

**BY ADV. SRI.P.V.SURENDRANATH FOR R5 AND R6
SRI.T.A.RAMADASAN
SRI.T.A.SHAJI FOR R4
PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B.KOSHY, J.

Criminal Appeal.No.390 OF 1999 ()

Dated this the 31st day of January, 2007

JUDGMENT

This appeal is filed by the State against the order of acquittal in Crl.A.No.315/1997 on the file of the Principal Sessions Court, Thalassery. The case was registered as Crime No.39/1994 of Maloor Police Station under Sections 143, 147, 148, 452, 427, 324, 326 and 307 read with Section 149 of the Indian Penal Code. The prosecution case is that in furtherance of their common object to commit murder of PW2 Balakrishnan due to their animosity towards him that on information furnished by him the Asst.Superintendent of Police, Thalassery has conducted a raid and utensils and other apparatus used for illicit distillation belonging to the 1st accused were seized and destroyed, the six accused with deadly weapons like chopper on 21.6.1994 at 8.15 p.m. committed trespass into the shoproom No.MP.VIII/228 belonged to PW3 Sahadevan at Thrikaderipoyil Tholambra amsom desom and inflicted injuries on PWs.2 and 3 by accused Nos.1 and 2 and

the other four accused committed mischief by damaging the jeep KL 3879 which was parked in front of the said shop. The accused left the place and the injured were taken to Govt.Hospital, Thalassery. After first aid they were taken to Medical College Hospital, Kozhikode for treatment. PW1 Gangadharan went to Maloor Police station and gave the first information statement and an FIR was registered and consequently all the six respondents were charge sheeted. Trial court convicted them for offences punishable under Section 143, 148, 452, 427, 324 and 307 read with Section 149 of I.P.C. On reappraisal of the evidence, appellate court found that the charges levelled against them were not proved and they were acquitted and the order of acquittal is challenged in this appeal.

2. For convicting the accused, prosecution mainly relied on the evidence of PWs.1 to 7, out of which PWs.2 and 3 were injured. PWs.6 and 7 were the neighboring shop owners. PW3 is the owner of the grocery shop in which the alleged attack on PW2 was committed. In his first information statement, case of PW1 was that Nelleri Aneesh, Panikken Pavithran, Kottai

Babu, Kottai Sukumaran, Natancheri Sivaraman and Kotten Raju formed themselves into an unlawful assembly with choppers chased PW2 and when PW2 Balakrishnan ran into the shop of PW3 Sahadevan, uttering that you cannot be permitted to leave, assaulted him and Aneesh inflicted cut injuries with chopper on the head, both the hands and stomach of Balakrishnan and Balakrishnan fell down in between the articles kept for sale in the shop. Natancheri Pavithran with the chopper in his hand uttered that you will also be murdered and inflicted a cut injury on the face and head of Sahadevan PW3, the shop owner. The others Kottai Babu, Pavithran, Sivaraman, Kotten Raju were committing damage on the jeep KLL 3879 parked in front of the shop with the choppers in their hand. After inflicting injuries and damaging the jeep all the accused ran towards the tea shop of one Raman. When this first informant was examined before the court as PW1 his case is that Aneesh, Pavithran, Babu, Mukundan, Sivaraman and Reghu seen chasing Balakrishnan who entered into the shop of PW3. The names of Kottai Sukumaran and Kotten Raju mentioned in his first statement were not mentioned in the witness box and instead of these two, the names of the 2nd

accused Pavithran and 4th accused Kotten Raghu @ Reghuthaman were mentioned and according to him two other names were mentioned by members. The motive alleged by PW1 is that two days prior to the incident, the Assistant Superintendent of Police, Thalassery conducted a raid at the shop of Aneesh and Pavithran and they were under the belief that the information was given to the police by PW2 Balakrishnan and thus PW2 was attacked. He also stated in the cross examination that some of the facts mentioned in Ext.P1 statement are not correct. He admitted that he himself and PW3 are residing in the same house and Balakrishnan is a close friend of him.

3. PW2, injured witness deposed regarding the injuries. According to him, Aneesh inflicted cut injuries on his head, hand and shoulder and below the chest and he felt in between the gunny bags and A2 Pavithran inflicted cut injury on his face and other four accused damaged his jeep parked in front of the shop. He was taken to Thalassery Govt.Hospital and after first aid he was admitted in Medical college hospital, Calicut where he was treated for 42 days. PW3 was also injured in the

incident. Both the injured witnesses narrated the incident in different ways. Lot of discrepancies between 161 statement of PW3 and his deposition were also brought out in cross examination. According to PW3, police incorrectly recorded his statement. The evidence of other defense was correctly analysed by the appellate court and appellate court found as follows:

“Now I may point out that the main argument put forward by the appellants' counsel before me are that first of all except PW2, the others are close relatives. Though an incident has happened at a time when all the nearby shops were kept opened, only PWs.6 and 7 who are shop owners, far away from the shop of PW3, have been cited as witnesses. The witnesses admitted that on the opposite side of the road of the shop of PW3 there is a shop of Sekharan and standing at the Sekharan's shop, the shop of PW3 is visible. But neither Sekharan or anybody who were present in the shop were cited as witness or examined. Only the close relatives were cited as eye witnesses to the incident. It may be noted that the case of PW3 and PW5 is that while PW2 came running into the shop of PW3, PW3 was packing some materials to be sold. But nobody has got a case that any stranger was present there to purchase any material. None of the witnesses have got a case that they came to the shop for purchasing any material from the shop. This cannot be believed. According to the appellants to support a false case, the near relatives alone were made eye witnesses and a false case has been foisted against these accused.”

The appellate court also found that motive was not proved. There was no evidence in this case that a raid was conducted by the police in a distillation centre of A1 and A2. If that be so, police could have made some evidence regarding the same. There was also no evidence either documentary or oral that there was sufficient light in the shop of PW3 so that witness could have seen the incident. The incident occurred at 8.15 p.m. When PWs.1 to 5 were examined before the court on the prosecution side not even a single question was put to them regarding the presence of light, for that matter to bring out any evidence that there was sufficient light inside the shop so that the witnesses could see the incident to identify the assailants properly. So also in the scene mahazar prepared, though it is stated that wiring is seen inside the shop there is no mention of the presence of even any electric bulbs or that electricity supply is available in the shop. There was also no electric light inside the shop and court below found that the burden of the prosecution is to prove that there was sufficient light to see the incident. The material witnesses have wrongly named in the previous statement. PWs.2 and 3 gave wrong names as accused to the Doctor who issued the wound certificate, apart

form the fact that names of A4 and A6 were not mentioned in the F.I.Statement. With regard to Ext.P4 wound certificate, regarding the wound of PW2 it was stated by PW2 himself to Doctor that Nelleri Aneesh, Kottai Sukumaran, Kottai Babu, Kotten Raju, Sivaraman and Mukundan inflicted injury with chopper. But it has deposed that it is A2, Pavithran who inflicted several injuries on him. There was also correction in the wound certificate, 'Kotten Reghu' was corrected as 'Kotten Raju'. In any way, Kottai Sukumaran and Kotten Raju were not accused in this case. According to Ext.P5 wound certificate with regard to PW3, his definite case was that Pavithran had inflicted cut injury on his face and head. PWs.1 to 5 are definite that accused 1 and 2 are the persons who ran behind PW2, entered into the shop and 1st accused inflicted injuries on PW2. But before the court PW3 has no case that 2nd accused Pavithran was present and he is the assailant who inflicted injuries on him. There is no case that 2nd accused Pavithran was present at the time of incident and one Katten Reghu was present at the time of incident. Thereafter court found as follows:

“Both PWs.2 and 3 the injured in their deposition also admitted that they have given the history of alleged injuries to the doctor. Therefore it is very clear that at the time of incident PWs.1 to 3 have mistaken identity regarding the persons who have attacked on them. Immediately after the incident they were under the impression that Kottai Sukumaran and Katten Raju were present and they have not identified the 2nd accused Pavithran or the 4th accused Reghu among them. Here the inconsistent aspect is that the definite case in the witness box by the occurrence witnesses is that 2nd accused Pavithran inflicted cut injury on the face and head of PW3 Sahadevan. So there is very clinching and clear evidence that so far as the person who inflicted injury on the face of Sahadevan PW3, the occurrence witnesses have mistaken identity. This further proves the fact that there was no sufficient light in the shop room to identify the persons who have made the attack. They have mistakenly identified two persons as Kottai Sukumaran and Katten Raju and after thought they have deleted these two persons and implicated 2nd accused Pavithran and Katten Reghu. Therefore as has been rightly pointed out by the learned counsel for the appellants, I am to held that there is no convincing evidence available on record to show that there is sufficient light in the shop room for the witnesses to see the incident and to identify the persons who have made the attack. This cuts the room of the prosecution case.

On reappraisal of evidence, appellate court clearly found that prosecution was not able to prove the case beyond reasonable doubt. It cannot be stated that view of the court below is not a possible one. Against the order of acquittal

appellate court will not interfere unless it is satisfied by this Court that view of the court below is perverse or patently illegal. In the above circumstances, I see no ground to interfere in the order of acquittal and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.390 OF 1999

JUDGMENT

31st January, 2007